Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1977

77-562 No.

JOHN EARLEY,

Petitioner

v.

STATE OF NORTH CAROLINA,

Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF NORTH CAROLINA

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TO: THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the State of North Carolina entered in this proceeding on July 20, 1977.

OPINION BELOW

The opinion of the North Carolina Supreme Court entered July 20, 1977, is reported in 293 N.C. 161. The opinion of the North Carolina Court of Appeals entered June 13, 1977, is reported in 33 N.C. App. 636. Copies of both opinions are printed as Appendix A to this Petition.

JURISDICTION

The jurisdiction of this Court is evoked under 28 U.S.C. Sec. 1257.

QUESTION PRESENTED

I. WHETHER A DEFENDANT HAS THE RIGHT, UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION, TO HAVE THE STATE PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT DID NOT ACT IN SELF-DEFENSE WHEN CHARGED WITH AN ASSAULT WITH A DEADLY WEAPON.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

Defendant was tried at the November 1, 1976, Session of Rutherford County Superior Court. From a verdict of guilty and judgment thereon. Defendant appealed to the North Carolina Court of Appeals, and from their opinion affirming the judgment petitioned the North Carolina Supreme Court for a review, which Petitioner was denied.

The evidence presented at the trial tended to show that the Defendant had had a valuable dog stolen and had observed the prosecuting witness, Byrd, as one of the thieves. Defendant had gone to Byrd in an attempt to recover the dog and sometime later, had agreed to pay Byrd $600 for the return of the dog. Defendant, however, only paid Byrd $300 and informed him that he would pay the balance when the dog was returned. The evidence then shows that Byrd became angry and insisted on receiving the full payment. An argument and fight ensued. The evidence is uncontroverted that Byrd had in his possession a box opener, which is a gadget holding a razor blade and is a popular weapon. The evidence then tends to show that Defendant fired a .357 magnum pistol, which is a large caliber, powerful weapon. The evidence further showed that Byrd was struck by a bullet, incurring a wound which medical evidence stated was from a small caliber weapon. The State relied completely upon circumstantial evidence and did not in any way controvert the Defendant's assertion that he fired only in self-defense and was not sure he hit the prosecuting witness, Byrd.

The trial Judge in his charge to the jury covers 15 pages of the record instructing the jury as to the evidence and the law without any mention that the Defendant was relying upon his defense. The Judge's charge upon the burden of proof is totally confusing. His only statement in the matter is "I again instruct you if you find that the Defendant did not act in self-defense, the burden of proof is upon the State".

When the case came on for hearing before the North Carolina Court of Appeals the Defendant raised the issue of whether the trial Court had properly instructed the jury as to self-defense. Admittedly, the question was not posed to that Court in the precise manner which it is being raised at this juncture. However, once the question of self-defense was raised, the Appellate Courts of North Carolina had the duty to insure that the constitutional rights of the Defendant had not been violated. This they totally failed to do. The North Carolina Court of Appeals held only that they had reviewed the Judge's charge and found it to be correct. The Supreme

Court of North Carolina summarily denied the Defendant's Petition to review the decision of the Court of Appeals without giving any reason whatsoever.

The Petitioner now respectfully brings this Petition to have this Honorable Court decide if his constitutional rights were violated in the trial of the case, and particularly in the charge of the trial Judge to the jury.

REASONS FOR GRANTING THE WRIT

THE DECISION OF THE NORTH CAROLINA COURT OF APPEALS AND ITS AFFIRMATION BY THE SUPREME COURT OF NORTH CAROLINA IS IN DIRECT CONFLICT WITH THE DECISION OF THIS COURT IN MULLANEY v. WILBUR, 421 U.S. 684 (1975) AND VIOLATED THE DEFENDANT'S CONSTITUTIONAL RIGHTS BY PLACING UPON HIM THE BURDEN OF PROVING SELF-DEFENSE.

The trial Judge in this case never instructed the jury that the burden of proof was upon the State to negate the possibility that the Defendant acted in self-defense in committing the alleged assault upon Byrd, the prosecuting witness. This Court has expressly held that the burden is upon the State to negate self-defense and that the trial Court should not place upon the Defendant the burden of proving to the jury that he acted in self-defense. MULLANEY v. WILBUR, 421 U.S. 684 (1975); HANKERSON v. NORTH CAROLINA, 45 L.W. 4717 (1977).

In the present case the trial Judge did place upon the Defendant the burden of proving that he acted in self-defense by reason that his charge consisted almost entirely of instructions to the jury upon the law and evidence as regarded the assault, and only included a one paragraph statement as to the Defendant's contention that he acted in self-defense. The trial Judge's instruction as to burden of proof is totally confusing, he having stated; "I again instruct you if you find that the Defendant did not act in self-defense the burden of proof is upon the State". It is the contention of the Petitioner that

the instructions to the jury by the trial Judge were totally negative to convey to the jury that the burden of proving self-defense, or the lack thereof, was upon the State and not upon the Defendant.

In addition to being contrary to the decisions of this Court, the decision of the North Carolina Court of Appeals and Supreme Court are contrary to the laws of the State of North Carolina. The cases of STATE v. MESSIMER, 237 N.C. 617 (1953) and STATE v. DOOLEY, 285 N.C. 158 (1974) hold that it is error for a trial Judge to devote his entire charge to the jury to the contentions of the State and only devote one paragraph to the contention of the Defendant that he acted in self-defense. These rulings are entirely consistent with the Defendant's constitutional guarantees. It is obvious that if a trial Court throughout the majority of its charge makes no mention of self-defense, mentioning self-defense only briefly toward the end of the charge, then the jury is most likely to infer that self-defense is of little or no importance. The Petitioner respectfully asks this Court to consider the practical effect of such a charge. Such practical effect would be for the jury to conclude that if the State had made out its case, disregarding self-defense, then it would be incumbent upon the Defendant to prove that he acted in self-defense in order to negate the State's proof. In order to protect the Defendant's right to have the State establish each element of the crime beyond a reasonable doubt, the trial Judge should give equal weight to the proposition of self-defense throughout his charge. To grossly weight the charge in favor of the aspect of the State's case is to deny the Defendant's constitutional rights as surely as if the Judge had expressly placed the burden upon the Defendant, as in MULLANEY, Supra.

CONCLUSION

The decision of this Court in MULLANEY, Supra, is clearly violated by the instruction of the Court in the case at bar in that the trial Judge did not expressly instruct the jury

that the State had the burden of negating self-defense but instead the Court effectively placed the burden upon the Defendant of proving self-defense by weighting its charge in favor of the State.

Respectfully submitted,

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COUNSEL FOR PETITIONER

APPENDIX A

Supreme Court of North Carolina

Spring Term 1977

STATE OF NORTH CAROLINA v. JOHN EARLEY	ORDER DENYING PETITION FOR DISCRETIONARY REVIEW (7729SC141)

This cause came on to be considered upon the petition of the defendant for discretionary review of the decision of the North Carolina Court of Appeals pursuant to G. S. 7A-31; upon consideration whereof, it is adjudged by the Court in conference, this 14 day of July 1977 that the petition be denied and that it be so certified to the North Carolina Court of Appeals to the intent that its decision be affirmed;

Issued under my hand and the seal of the Supreme Court this 20 day of July 1977.

John R. Morgan
Clerk of the Supreme Court
of North Carolina

NO. 7729SC141

North Carolina Court of Appeals

Filed: 13 June 1977

STATE OF NORTH CAROLINA

v.

Rutherford County
No. 76CR1092

JOHN EARLEY

Appeal by defendant from Griffin, Judge. Judgment entered 3 November 1976 in Superior Court, Rutherford County. Heard in the Court of Appeals 9 June 1977.

Defendant was convicted of assault with a deadly weapon inflicting serious injury.

The State's evidence tends to show that defendant shot Ronald Byrd in the side of his back with a .357 magnum pistol while Byrd was running away from defendant. Byrd was in the hospital for about 7 days because of the wound. Immediately before the shooting, defendant had struck Byrd with the pistol and threatened to shoot him. Defendant was upset because he believed Byrd had stolen his dog and would not tell him where the dog could be found.

Defendant's evidence tended to show that he and Byrd had looked for the dog for several days. Byrd cursed defendant because he did not think defendant was going to give him all the money he had promised him for looking for the dog. Defendant then struck Byrd with his hand. Byrd then struck defendant with a metal object. Defendant kicked the object from Byrd's hand and fell down into a bush. While he was down, Byrd brandished a box opener with a razor blade in the end. Defendant was afraid Byrd would cut him open with that razor blade. He tried to get his pistol out of his pocket to scare Byrd away. The pistol fired while it was still in defend-

ant's pocket. Byrd began to run and defendant didn't know that Byrd had been shot. He did not intend to hurt Byrd, but was only trying to protect himself.

Judgment was entered imposing a prison sentence and defendant appealed.

Attorney General Edmisten, by Special Deputy Attorney General W. A. Raney, Jr., for the State.

Hamrick and Hamrick, by J. Nat Hamrick and George R. Morrow, for defendant appellant.

VAUGHN, Judge. All of defendant's assignments of error relate to the judge's charge to the jury. Defendant first, in essence, contends that the judge's instructions on self-defense were inadequate. We have carefully considered able counsel's forceful argument and the case cited in support thereof. We conclude that the court properly declared and explained the law arising on the evidence given in the case. Defendant's right to act in self-defense was properly explained to the jury. In fact, we fail to see how it could have been explained more clearly.

Defendant also argues that the court erred in recapitulating the testimony from one of the witnesses in that he omitted some of the evidence that was material to the defense. The argument is without merit. The judge is not required to recapitulate all of the evidence, and he so instructed the jury. If counsel had desired further elaboration, it was his duty to call that to the court's attention at trial.

The evidence at trial was conflicting. The jury resolved the conflicts in favor of the State. The appeal fails to disclose any errors of law that were committed at trial.

No error.

Judges BRITT and ARNOLD concur.

Report according to Rule 30(e).